



Agricultural Marketing Service

7 CFR Part 989

[Doc. No. AMS-SC-23-0039; 23-J-0080]

Marketing Order for Raisins Produced from Grapes Grown in California (M.O. No. 989); Hearing

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notification of hearing on proposed rulemaking.

SUMMARY: Notice is hereby given of a public hearing to receive evidence on proposals recommended by the Raisin Administrative Committee (Committee) to amend Federal Marketing Order No. 989 (Order). The proposed amendments would reduce Committee membership, eliminate the designated cooperative bargaining association member seat, lower quorum requirements, remove producer district representation, remove the requirement for separate member and alternate nominations, remove factors for establishing marketing policy, add language to clarify the quality of reconditioned raisins, add authority to accept voluntary contributions, and add language regarding ownership of intellectual property. The Committee recommended the proposed amendments after determining a significant reduction in the size of the industry has made it increasingly difficult to fill Committee positions and conduct business. The Agricultural Marketing Service (AMS) also proposes to make additional changes to the Order as may be necessary to conform to any amendatory changes that result from the hearing.

DATES: The hearing will be held February 13-14, 2024, from 9:00 a.m. to 5:00 p.m. Pacific Time (PT) and, if deemed necessary by the presiding administrative law judge, will continue until such time or day as determined by the judge.

ADDRESSES: The hearing will be held at the office of the Raisin Administrative Committee, 2445 Capitol Street, Suite 200, Fresno, California 93721.

FOR FURTHER INFORMATION CONTACT: Christy Pankey, Marketing Specialist, or Matthew Pavone, Chief, Rulemaking Services Branch, Market Development Division, Specialty Crops Program, AMS, USDA, 1400 Independence Avenue SW, Stop 0237, Washington, DC 20250-0237; Telephone: (202) 720-8085, or Email: Christy.Pankey@usda.gov or Matthew.Pavone@usda.gov.

Small businesses may request information on this proceeding by contacting Richard E. Lower, Market Development Division, Specialty Crops Program, AMS, USDA, 1400 Independence Avenue SW, Stop 0237, Washington, DC 20250-0237; Telephone: (202) 720-8085, or Email: Richard.Lower@usda.gov.

SUPPLEMENTARY INFORMATION: This administrative action is instituted pursuant to the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), hereinafter referred to as the “Act,” and the applicable rules of practice and procedure governing amendments to marketing agreements and orders (7 CFR part 900). This action is governed by the provisions of sections 556 and 557 of title 5 of the United States Code and, therefore, is excluded from the requirements of Executive Order 12866, 13563 and 14094. AMS provided notice of the hearing to Tribal Governments through the U.S. Department of Agriculture’s (USDA) Office of Tribal Relations.

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) seeks to ensure that within the statutory authority of a program, the regulatory and informational requirements are tailored to the size and nature of small businesses. Interested persons are invited to present evidence at the hearing on the possible regulatory and informational impacts of the proposals on small businesses.

The amendments proposed herein have been reviewed under Executive Order 12988, Civil Justice Reform. They are not intended to have retroactive effect.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the USDA a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review USDA's ruling on the petition, provided an action is filed no later than 20 days after the date of the entry of the ruling.

The Raisin Administrative Committee (Committee) is established under provisions of the Federal Marketing Order No. 989 (Order), which regulates the handling of raisins produced from grapes grown in California. The Order stipulates that the Committee may recommend to the Secretary amendments to the Order, and subject to USDA's approval, shall establish rules and procedures as may be necessary to accomplish the purposes of the Act and the efficient administration of the Order.

On October 20, 2022, the Committee recommended to USDA proposals to amend Committee size, composition, producer representation, and quorum requirements; to amend nomination procedures for small cooperative and independent producers; to remove two factors for establishing marketing policy, and to add language to clarify the quality of reconditioned raisins. The Committee voted on the above proposed amendments, 20 in favor and 10 opposed, at its August 17, 2022, meeting. On August 16, 2023, the Committee also voted to recommend to USDA the inclusion of additional proposals that would add authority to accept voluntary contributions and add language regarding Committee ownership of intellectual property. AMS received the Committee's unanimous proposal for those two recommendations on August 21, 2023.

After reviewing the proposals and other information submitted by the Committee, USDA has decided to schedule this matter for a public hearing. Testimony is invited on the following proposals or appropriate alternatives or modifications to such proposals as summarized below. These proposals submitted by the Committee have not received the approval of USDA.

Proposal 1 - Amend Committee Membership Size and Composition, Lower Quorum Requirements, and Remove Producer District Representation

The Committee recommended reducing the Committee's size and lowering quorum requirements after determining that a substantial reduction in the size of the California raisin industry over the past 20 years has made it increasingly difficult to fill Committee positions and at times meet quorum requirements. Further, the Committee recommended the elimination of the member and alternate position dedicated to the cooperative bargaining association, removal of producer district representation, and the addition of an unaffiliated producer member seat. The Committee believes the designated cooperative bargaining association position is no longer warranted after a substantial decrease in total raisin acquisitions. The amendments proposed are as follows:

- Amend § 989.26 by reducing Committee membership from 47 to 21 members. Corresponding changes would also be made to § 989.126.
- Remove producer district representation in § 989.26(c), and add an unaffiliated producer member seat to § 989.126(a)(1). Corresponding changes would also remove §§ 989.22 and 989.122, and references to producer districts in §§ 989.29(b)(2), 989.126(a) and 989.129.
- Remove the designated bargaining association seat in § 989.26. Corresponding changes would also remove the reference to the bargaining association position in § 989.30.

- Amend § 989.38 by lowering quorum requirements from 25 to 14.

Proposal 2 – Remove Separate Nomination Procedures for Independent and Small Cooperative Producers

Separate nomination procedures for independent producers or producers affiliated with small cooperative marketing associations' member and alternate positions were added to the Order in 2018 due to the number of vacancies on the Committee, and to encourage participation by alternate members. However, the Committee now recommends eliminating the requirement that independent and small cooperative producers must be nominated separately for either a member or alternate position as it would not be necessary with a reduced Committee size. The amendment proposed is as follows:

- Amend § 989.29 to eliminate the requirement for separate nominations for independent producers or producers affiliated with small cooperative marketing associations.

Proposal 3 – Update Marketing Policy and Quality Standards for Reconditioned Raisins

The Committee recommended removing factor number 4, “An estimated desirable carryout at the end of the crop year;” and part of factor number 5, “, considering the estimated world raisin supply and demand situation” from the Committee’s marketing policy considerations. The Committee determined that factor 4 is no longer necessary since the Order no longer regulates volume, the authority for which was removed in 2018. Factor number 5 will continue to be part of the marketing policy. However, consideration of part of factor number 5 relied on USDA’s National Agricultural Statistic Service (NASS) “Raisins: World Market and Trade Report” to determine the estimated world raisin supply and demand situation. NASS no longer publishes the report, and the

Committee found it would be cost prohibitive to acquire such information by other means.

Additionally, the Committee recommended adding language to §§ 989.24 and 989.58 clarifying that the quality of reconditioned raisins is the same as that of standard fruit. The Committee believes that there is a negative impression in the raisin market that the quality of reconditioned raisins that have been reworked and reinspected is somehow diminished. The Committee believes that the proposed language will help to dispel this negative impression, stating that natural condition raisins are any raisins that have been inspected and meet the Order's minimum requirements, which would include reconditioned fruit. The amendments proposed are as follows:

- In § 989.54(a), remove factor number 4 “An estimated desirable carryout at the end of the crop year;” and the last part of factor number 5 “, considering the estimated world raisin supply and demand situation.”
- Amend §§ 989.24 and 989.58 by adding language to clarify the quality of reconditioned raisins as standard raisins.

Proposal 4 – Add Contribution Authority and Patent/Trademark Authority

The Committee recommended the addition of authority to accept voluntary contributions, and recommended adding language that would establish provisions for the collection of voluntary contributions by the Committee. The Committee further recommended the addition of authority related to Committee ownership of and rights to intellectual property, including authority to collect royalties from intellectual property.

The amendments proposed are as follows:

- Add § 989.63 to establish the authority to accept voluntary contributions.
- Add § 989.64 to establish authority related to ownership of and rights to intellectual property and add authority for the collection of rents/royalties from the same.

In addition to the proposed amendments submitted by the Committee, AMS proposes to make any such conforming changes to the Order as may be necessary to conform to any amendment that may result from the proposals, or to correct minor inconsistencies and typographical errors.

USDA will oversee this formal rulemaking proceeding. The issuance of this notice of public hearing is the first of several steps in the amendatory rulemaking process, including the issuance of a Recommended Decision, public comment period, Secretary's Decision, and if the prior steps prove favorable, a grower referendum.

At the hearing, interested persons may provide testimony in support of or in opposition to the proposed amendments. Interested persons are invited to testify on the possible regulatory and informational impacts of the proposed amendments on small businesses.

Interested persons will also be provided the opportunity to file briefs in support of or in opposition to the proposed amendments after the hearing, as well as file exceptions to any Recommended Decision that may be issued. Finally, any proposed amendments will be required to be approved in a grower referendum before they can be implemented.

USDA will hold the public hearing for the purposes of: (i) receiving evidence about the economic and marketing conditions which relate to the proposed amendments of the Order; (ii) determining whether there is a need for the proposed amendments to the Order; (iii) determining if there are other alternatives to the proposed amendments or duplicates of the proposed amendments; and (iv) determining whether the proposed amendments or appropriate modifications thereof will tend to effectuate the declared policy of the Act.

All persons wishing to submit written material as evidence at the hearing should be prepared to submit four copies of such material at the hearing. Four copies of prepared testimony for presentation at the hearing should also be made available. To the

extent practicable, eight additional copies of evidentiary exhibits and testimony prepared as an exhibit should be made available to USDA representatives on the day of appearance at the hearing. Any requests for preparation of USDA data for this rulemaking hearing should be made at least 10 days prior to the beginning of the hearing.

From the time the notice of hearing is issued until the issuance of a final decision in this proceeding, USDA employees involved in the decisional process are prohibited from discussing the merits of the hearing issues on an *ex parte* basis with any person having an interest in the proceeding. The prohibition applies to employees who are or may reasonably be expected to be involved in the decisional process of the proceeding in the following organizational units: Office of the Secretary of Agriculture; Office of the Administrator, AMS; Office of the General Counsel; and the Specialty Crops Program, AMS. Procedural matters are not subject to the above prohibition and may be discussed at any time.

Testimony is invited on the recommended proposals to amend 7 CFR part 989, or appropriate alternatives or modifications to such proposals, as follows:

List of Subjects in 7 CFR Part 989

Grapes, Marketing agreements, Raisins, Reporting and recordkeeping requirements.

PART 989 – RAISINS PRODUCED FROM GRAPES GROWN IN CALIFORNIA

1. The authority citation for part 989 continues to read as follows:

Authority: 7 U.S.C. 601-674.

§ 989.22 [Removed and Reserved]

2. Remove and reserve § 989.22.

3. Amend § 989.24 by revising paragraph (b) to read as follows:

§ 989.24 Standard raisins, off-grade raisins, other failing raisins, and raisin residual material.

* * * * *

(b) *Off-grade raisins* means raisins which do not meet the then effective minimum grade and condition standards for natural condition raisins: *Provided*, That raisins which are certified as off-grade raisins shall continue to be such until successfully reconditioned as standard raisins or become “other failing raisins.”

* * * * *

4. Revise § 989.26 to read as follows:

§ 989.26 Establishment and membership.

A Raisin Administrative Committee is hereby established consisting of 21 members of whom 12 shall represent producers, 8 shall represent handlers and 1 shall be a public member.

(a) The producer members shall be selected as follows:

(1) Producer members representing the cooperative marketing association(s) shall be members of such association(s) engaged in the handling of raisins, each of which acquired not less than 10 percent of the total raisin acquisitions during the preceding crop year, and those members shall be equal to the product, rounded to the nearest whole number, obtained by multiplying 12 by the ratio the cooperative marketing association(s) raisin acquisitions are to the acquisitions of all handlers during the preceding crop year.

(2) Producer members representing cooperative bargaining association(s) shall be members of such association(s), and the number of those members shall be equal to the product, rounded to the nearest whole number, obtained by multiplying 12 by the ratio the raisins acquired by handlers from bargaining association members are to the total acquisitions of all handlers during the preceding crop year.

(3) All other producer members, who shall not be members of a cooperative bargaining association(s), cooperative marketing association(s) engaged in the handling of raisins which acquired 10 percent or more of the total acquisitions during the

preceding crop year, nor sold for cash to cooperative marketing association(s), shall represent all producers not defined in paragraphs (a)(1) or (2) of this section and shall be selected as designated in the rules and regulations.

(b) The handler members shall be divided into two groups and include the following:

(1) Handler members shall be selected from and represent cooperative marketing association(s) engaged in the handling of raisins each of which acquired not less than 10 percent of the total raisin acquisitions during the preceding crop year, and the number of those members shall be equal to the product, rounded to the nearest whole number, obtained by multiplying 8 by the ratio of the cooperative marketing association(s) raisin acquisitions are to the total acquisitions of all handlers during the preceding crop year.

(2) The remaining handler members shall be selected from and represent all other handlers, which would include all independent handlers and small cooperative marketing association(s) who acquired less than 10 percent of the total raisin acquisitions during the preceding crop year. Handler nominees for this group shall be nominated by all handlers in the group in a manner determined by the Committee, with the approval of the Secretary, and specified in the rules and regulations.

(c) The public member shall be nominated by the Committee and selected by the Secretary as public member.

(d) For each member of the Committee there shall be an alternate member who shall have the same qualifications as the member for whom they are an alternate.

5. Amend § 989.29 by revising paragraphs (a) and (b)(1) and (2) to read as follows:

§ 989.29 Initial members and nomination of successor members.

(a) *Initial members.* Members and alternate members of the Committee serving immediately prior to the effective date of this amended subpart shall, if thereafter they are

eligible, serve on the Committee until April 30, 2026, and until their respective successors have been selected and qualified.

(b) * * *

(1) The Committee shall notify the cooperative marketing association(s) engaged in handling not less than 10 percent of the total raisin acquisitions during the preceding crop year, and cooperative bargaining association(s), of the date by which nominations to fill member and alternate member positions shall be made. The Committee shall give reasonable publicity of a meeting or meetings of producers who are not members of cooperative bargaining association(s), or cooperative marketing association(s) which handled 10 percent or more of the total raisin acquisitions during the preceding crop year, and of independent handlers and cooperative marketing association(s) who handled less than 10 percent of the total raisin acquisitions during the preceding crop year, for the purpose of making nominations to fill the member and alternate member positions prescribed in § 989.26 (a)(3) and (b): *Provided*, That member and alternate member nominations by independent handlers and cooperative marketing association(s) who acquired less than 10 percent of the total raisin acquisitions during the preceding crop year may be made to the Committee by mail in lieu of meetings.

(2)(i) Any producer representing independent producers and producers who are affiliated with cooperative marketing association(s) handling less than 10 percent of the total raisin acquisitions during the preceding crop year must have produced grapes which were made into raisins.

(ii) Each such producer whose name is offered in nomination to represent on the Committee independent producers or producers who are affiliated with cooperative marketing association(s) handling less than 10 percent of the total raisin acquisitions during the preceding crop year shall be given the opportunity to provide the Committee a short statement outlining qualifications and desire to serve if selected. These brief

statements, together with a ballot and voting instructions, shall be mailed to all independent producers and producers who are affiliated with cooperative marketing associations handling less than 10 percent of the total raisin acquisitions during the preceding crop year of record with the Committee. The producer candidate receiving the highest number of votes shall be designated as the first member nominee for a member position in which they qualify, the second highest shall be designated as the second member nominee for a member position which they qualify, until nominees for all producer member positions have been filled. Similarly, after all producer member positions have been filled, the producer candidate receiving the highest number of votes shall be designated as the first alternate member nominee for a member position in which they qualify, the second highest shall be designated as the second alternate member nominee for a member position in which they qualify, until nominees for all alternate member positions have been filled.

(iii) In the event there are no qualified candidates for any designated producer member or alternate member positions, such positions may be filled by other producer candidates not otherwise nominated for a position.

(iv) Each independent producer or producer affiliated with cooperative marketing association(s) handling less than 10 percent of the total raisin acquisitions during the preceding crop year shall cast only one vote with respect to each position for which nominations are to be made. Write-in candidates shall be accepted. The person receiving the most votes with respect to each position to be filled, in accordance with paragraph (b)(2)(ii) and (iii) of this section, shall be the person to be certified to the Secretary as the nominee. The Committee may, subject to the approval of the Secretary, establish rules and regulations to effectuate this section.

* * * * *

6. Revise § 989.30 to read as follows:

§ 989.30 Selection.

The Secretary shall select producer, handler, and public members and alternate members in the number specified in § 989.26, as applicable, and with the qualifications specified in § 989.27. Such selections may be made from nominations certified pursuant to § 989.29 or from other eligible producers, or handlers.

§ 989.38 [Amended]

7. Amend § 989.38 by removing the numeral “25” and adding in its place the numeral “14”.

§ 989.54 [Amended]

8. Amend § 989.54 by:

a. Removing paragraph (a)(4);

b. Redesignating paragraphs (a)(5) through (9) as paragraphs (a)(4) through (8), respectively; and

c. In redesignated paragraph (a)(4), removing the text “, considering the estimated world raisin supply and demand situation”.

9. Amend § 989.58 by adding paragraph (g) to read as follows:

§ 989.58 Natural condition raisins.

* * * * *

(g) All raisins which have been inspected and certified as meeting the minimum grade, quality, and condition standards established pursuant to this section, whether upon incoming inspection or upon later inspection after reconditioning, shall be determined to be standard raisins, labelled accordingly, and shall be eligible for commercial disposition as natural condition raisins or packed raisins in normal outlets.

10. Add § 989.63 to read as follows:

§ 989.63 Contributions.

The Committee may accept voluntary contributions: *Provided*, That such contributions shall only be used to pay expenses authorized under § 989.79.

Furthermore, contributions shall be free from any encumbrances by the donor and the Committee shall retain complete control of their use.

11. Add § 989.64 to read as follows:

§ 989.64 Patents, copyrights, trademarks, inventions, product formulations, and publications.

(a) Any patents, copyrights, trademarks, inventions, product formulations, and publications developed through the use of funds received by the Committee under this subpart shall be the property of the U.S. Government, as represented by the Committee, and shall, along with any rents, royalties, residual payments, or other income from the rental, sales, leasing, franchising, or other uses of such patents, copyrights, trademarks, inventions, product formulations, or publications, inure to the benefit of the Committee;³⁵ shall be considered income subject to the same fiscal, budget, and audit controls as other funds of the Committee;³⁵ and may be licensed subject to approval by the Secretary.

(b) Upon termination of this subpart, § 989.92 shall apply to determine disposition of any property, including patents, copyrights, trademarks, inventions, product formulations, and publications developed through the use of funds received by the Committee under this subpart.

(c) Should patents, copyrights, trademarks, inventions, product formulations, or publications be developed through the use of funds collected by the Committee under this subpart and funds contributed by another organization or person, ownership and related rights to such patents, copyrights, trademarks, inventions, product formulations, or publications shall be determined by agreement between the Committee and the person or organization contributing funds towards the development of such patents, copyrights,

inventions, trademarks, product formulations, or publications in a manner consistent with paragraph (a) of this section.

(d) Should any patents, copyrights, trademarks, inventions, product formulations, or publications, be licensed to the Committee by another person or organization, the rights and obligations regarding such licensed patents, copyrights, trademarks, inventions, product formulations, or publications shall be determined by agreement between the Committee and the person or organization permitting licensure in a manner consistent with paragraph (a) of this section.

§ 989.122 [Removed and Reserved]

12. Remove and reserve § 989.122.

13. Revise § 989.126 to read as follows:

§ 989.126 Representation of the Committee.

(a) Pursuant to § 989.26(a)(3), and commencing with the term of office beginning May 1, 2026, apportionment of independent and small cooperative producers shall be:

(1) One producer member, selected from and representing all producers, who is unaffiliated with any handler (including, but not limited to, ownership, employment, or agent of any handler, and whose family members are similarly unaffiliated with any handler); and

(2) The remaining producer member(s) selected from and representing all other independent and small cooperative producers.

(b) Pursuant to section § 989.26(b)(2), and commencing with the term of office beginning May 1, 2026, apportionment of the independent and small cooperative marketing association handlers shall be:

(1) Two members selected from and representing the four handler(s) other than major cooperative marketing association handler(s) who acquired the largest percentage of the total raisin acquisitions during the preceding crop year; and

(2) The remaining member(s) selected from and representing all other handlers, including small cooperative marketing association handler(s) and all processors.

13. Revise § 989.129 to read as follows:

§ 989.129 Voting at nomination meetings.

Any person (defined in § 989.3 as an individual, partnership, corporation, association, or any other business unit) who is engaged, in a proprietary capacity, in the production of grapes which are sun-dried or dehydrated by artificial means to produce raisins and who qualifies under the provisions of § 989.29(b)(2) shall be eligible to cast one ballot for a nominee for each producer member position and one ballot for a nominee for each producer alternate member position on the Committee which is to be filled.

Such person must be the one who or which: Owns and farms land resulting in his or its ownership of such grapes produced thereon; rents and farms land, resulting in his or its ownership of all or a portion of such grapes produced thereon; or owns land which he or it does not farm and, as rental for such land, obtains the ownership of a portion of such grapes or the raisins. In this connection, a partnership shall be deemed to include two or more persons (including a husband and wife) with respect to land the title to which, or leasehold interest in which, is vested in them as tenants in common, joint tenants, or under community property laws, as community property. In a landlord-tenant relationship, wherein each of the parties is a producer, each such producer shall be entitled to one vote for a nominee for each producer member position and one vote for each producer alternate member position. Hence, where two persons operate land as landlord and tenant on a share-crop basis, each person is entitled to one vote for each such position to be filled. Where land is leased on a cash rental basis, only the person who is the tenant or cash renter (producer) is entitled to vote. A partnership or corporation, when eligible, is entitled to cast only one vote for a nominee for each producer position to be filled.

Erin Morris,

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Agricultural Marketing Service.

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